

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:)	
)	
Leased Commercial Access)	
)	
Development of Competition and Diversity)	MB Docket 07-42
Video Programming Distribution and Carriage)	FCC 18-80
)	
Modernization of Media Regulation Initiative)	MB Docket 17-105

To: The Commission

Comments of Combonate Media Group

These comments are submitted by Duane Polich, as the owner of Combonate Media Group, an aspiring leased access producer. Combonate Media Group is located in Bothell, Washington, a suburb of Seattle and wants to provide locally focused community-oriented television programming that concerns the many smaller communities throughout the Puget Sound region and greater Northwest that do not have a full power TV station nor have access to a low power TV station. The best and most available method to supply these communities with programming of local interest and address the issues and concerns of the residents, workers, and businesses of these smaller communities is a leased access cable TV channel, such as those found in a number of areas, yet there is a considerable need for more.

The problem that Combonate Media Group found in using commercial leased in its area was due to the consolidation of cable companies and their consolidation of headends, standardization, etc was that the current provider to much of the area that Combonate wanted to provide service was large cable company (in this case Comcast). Comcast had acquired most of the cable systems in the Greater Puget Sound area covering several counties. Through consolidation of its headends, Comcast stance was that they could only provide a leased access channel that covers most of the Puget Sound area at an expense over a several hundred thousand dollars for a full-time channel. This was not feasible, not only due to the cost, but it would be very difficult to provide locally focused programming

to such a wide area and with non-adjacent communities or counties, viewers and businesses that did not share common interests. For example, the residents of Everett would have little interest in local high school sports in Olympia, nor businesses in Olympia would have little interest in the residents of Everett. The communities' interests and concerns are completely different.

Combonate Media Group was wary of using leased access due to the uncertainty of dealing with the whims and folly of cable system operators that change direction at their discretion which could be ruinous to a leased access operation, the roadblocks that cable system operators threw in the way, such as insurance requirements, adhesion contracts, channel and tier placement, restrictions on methods of delivery, etc. made a very difficult investment environment.

Combonate Media Group had high hopes that the 2008 Leased Access Order that grew out of MB Docket 07-42 would address much of its concerns and needs. Lost in the 2008 order was the provision that cable companies would be expected to provide leased access to a finite number of subscribers if technically feasible. i.e. it was providing that to non-leased access programs such as PEG channels, local origination and private channels in the same area. The Commission went on to say although it would not require cable system operators to provide leased access to discrete areas that are not being provided by a non-leased access programmer at this time, that it would revisit this issue if the circumstances warranted it. Before consolidation adjacent communities were served by different systems and franchises and that the headends existed on a more local level. Combonate Media is of the opinion that this certainly was not the intention of Congress when it established commercial leased access with the Cable Act of 1984 to provide access to diverse and independent sources of video programming to cable subscribers.

Of course, the 2008 Order was stayed by the order of the Sixth Circuit Court of Appeals requested by the cable companies that claimed they would be irreparably harmed by certain provisions of the Order.

It is these issues and the policies and actions of the Commission that has prevented Combonate Media Group to use leased access in the manner it had envisioned. Had the 2008 leased access order gone through, it would have significantly enhanced the feasibility and practicality of its business plan.

While it is deplorable that it has taken the Commission 10 years to address the stay order, it is commendable that the current Commission is finally doing that. However, Combonate Media Group, firmly believes that it is not necessary to vacate the entire order, but rather more practical to fix the parts that have drawn the concern of the OMB and the Sixth Circuit Court of Appeals and reach a fair and equitable resolution to all parties. There are many benefits contained in the 2008 order that encourages the use of leased access and the benefits and costs to fix outweigh the costs of starting over from scratch.

To underscore the need to adopt an amended Order, the comments gather so far from the cable system operators in the Media Modernization Order, such as the need to charge a deposit/fee to provide information for a leased access request, the request that part-time leased access be eliminated, and needing to respond only to bona-fide leased access requests, show the disdain that the cable companies have for leased access and the difficulties of dealing with them. Commercial leased access was established by Congress to address many concerns about diverse sources of video programming (voices) which is an underlying theme of democracy and the backbone of our nation.

The Commission should also reject any attempt by cable companies to claim that the leased access requirement is a violation of their First Amendment Rights. This issue has been already addressed in various courts and FCC proceedings as noted in the 2008 Order. Cable companies are also granted franchises by many cities, towns or government entities many providing a monopoly which grants access to the property and right of ways of that governmental entity for use by the cable system for their equipment and coaxial and fiber, changes to such are subject to permits. Many franchise agreements that grant this access are subject to expected levels of services and technical compliance and includes provisions for PEG and leased access channels.

The Commission should also reject the notion that other methods of distribution of video programming such as DBS and the internet is a viable substitution for leased access as an avenue of providing diverse sources of programming. While they may expand or enhance this avenue, DBS is not a viable option for local programming, nor can the internet yet duplicate the experience and ease of using cable to access and view programming.

The Commission should review and study the leased access rules established by Congress with the passage of the Cable Act of 1984, and the addition of Section 612 to the Communications Act of 1934 and the further related amendments of the Cable Act and why and what Congress intended and expected to achieve and the reasonings for such action.

In any case, the Commission should not adopt a stance which leads to the elimination of leased access.

The Commission should adopt rules and procedures that encourage use of leased access as intended by Congress and promote a level playing field for leased access users and provide for fair and equitable treatment for leased access users and cable system operator. The Commission should not adopt policies that hinder or discourages use of leased access by establishing additional roadblocks.

In summation, Combonate Media Group urges the Commission to not vacate the entire 2008 leased order, but adopt the parts that are not subject to OMB or Sixth Circuit of Appeals scrutiny and either staff review or issue a FNPRM to address the issues of concern to the OMB and the Appeals Court.

Respectfully Submitted,

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